

10 Official Opinions of the Compliance Board 77 (2016)

- ◆ **5(A)(1) CLOSED SESSION PROCEDURES, SUMMARIZED**
- ◆ **5(C)(3) WRITTEN CLOSING STATEMENT: FAILURE TO PREPARE, VIOLATION**
- ◆ **4(A)(2) PERSONNEL EXCEPTION: NOT APPLICABLE TO DISCUSSION ABOUT CLOSING LAND-USE FILE TO FURTHER CORRESPONDENCE**
- ◆ **4(G) LEGAL ADVICE EXCEPTION: NOT APPLICABLE TO ACTION ON ACCEPTING CORRESPONDENCE IN LAND USE MATTER**
- ◆ **6(D)(3) CLOSED SESSION SUMMARY: FAILURE TO INCLUDE ALL OF THE REQUIRED INFORMATION, VIOLATION**
- ◆ **7(C) TRAINING REQUIREMENT: MET WHEN ORIGINAL DESIGNEE STILL SERVES THE PUBLIC BODY**

*Topic numbers and headings correspond to those in the Opinions Index (2014 edition) at https://www.oag.state.md.us/Opengov/Openmeetings/OMCB_Topical_Index.pdf

July 19, 2016

Re: Charles County Planning Commission
Kenneth W. Hastings, Jr., *Complainant*

Complainant Kenneth W. Hastings, Jr. alleges that the Charles County Planning Commission violated the Open Meetings Act by failing to make the required disclosures about its closed session on March 21, 2016. Specifically, Complainant alleges that the Commission's presiding officer did not prepare a written statement before closing the session and did not adequately summarize the closed session in the minutes of the next open session. Complainant further alleges that the Commission used the closed session to discuss a topic that the Commission was required to discuss in public and that the Commission failed to designate a member, officer, or employee to take training on the Act.

The Deputy County Attorney, responding on the Commission's behalf, states that the Commission complied "with the spirit of the Open Meetings Laws." She further states that the Commission had designated the chair and the clerk to take training when the requirement was enacted, but that the

composition of the Commission has changed and that the Commission “recognize[s] the immediate need to update procedures and to implement annual training as a corrective measure.”

A public body may exclude the public from a meeting subject to the Act only when (1) the topic falls within one of the fourteen exceptions listed in § 3-305(b),¹ and (2) the presiding officer has publicly conducted a recorded vote to close and prepared a written statement, often called a “closing statement.” The closing statement must disclose the exception that authorizes the closing, the topics that will be discussed, and the public body’s reasons for excluding the public from the discussion. § 3-305(d); *see also* Chapters 4 and 5, Open Meetings Act Manual (2015) (explaining the exceptions and conditions for closing a meeting). The discussion in the closed session must then fall within the topics and exceptions disclosed in the closing statement. § 3-305(b). After the closed session, the public body must disclose, in the minutes of its next open session, a summary that provides four items of information about the events of the closed session. § 3-306(c)(2). If a public body closes a meeting to perform an administrative function, it must also disclose information about that meeting in the minutes of its next open session. § 3-104. Many public bodies include their closed-session summaries in the minutes of the open meeting held that day. That practice provides the information to the public more quickly, and we have approved it so long as the public is told where to find it.

As the response implicitly recognizes, the Commission’s closed session on March 21, 2016, fell short of these requirements. We begin with the lack of a closing statement. According to the minutes of the open session that day, the chair held a recorded vote on the basis of an oral motion. The motion cited the “legal advice” exception provided by § 3-305(b)(7), referred to “personnel matters,” and stated that the Commission would then “proceed into administrative session.” The chair did not prepare a written closing statement, and, in any event, the oral motion neither specified the topics to be discussed nor provided the Commission’s reasons for excluding the public. We therefore find that the Commission violated § 3-305(d) by meeting in closed session without having fulfilled the condition that it disclose this information in a written statement. As we have often explained, a closing statement is not a “mere formality,” but rather serves multiple purposes. *See 9 OMCB Opinions* 15, 22-23(2013); *see also* Open Meetings Act Manual 38-40 (discussing our opinions; providing practice notes).

Next, we will give advice on whether the closed-session discussion fell within the exceptions mentioned in the motion to close and thus would have

¹ Statutory citations are to the General Provisions Article of the Maryland Annotated Code (2014, with 2015 supp.).

been permissible had the Commission prepared a closing statement. This issue is hard to address without the information that a properly-completed closing statement would have provided. Nonetheless, we find that the Commission exceeded the scope of the personnel and legal advice exceptions when it voted in closed session to adopt a motion “to not accept any incoming correspondence regarding the Comprehensive Plan.” We see no connection between that topic and personnel matters, even if, as Complainant infers, part of the closed session involved a developer’s request that some members recuse themselves from voting on the developer’s projects. The “legal advice” exception might have applied to some of the discussion about comprehensive plan correspondence; that exception permits a public body to close a meeting “to consult with counsel to obtain legal advice.” § 3-305(b)(7). After that advice has been provided, however, the public body must return to open session to discuss the matter. *See* Open Meetings Act Manual at 32-33 (summarizing our opinions on the scope of the exception).

With regard to the Commission’s closed-session summary of the March 21 session, we refer the Commission to § 3-306(c)(2) for a list of the items that must be included for sessions closed under an exception, and to § 3-104, which specifies the disclosures that must be made when a public body has recessed an open meeting to conduct an administrative function. The Commission disclosed some, but not all, of the items required by the Act. For example, the Commission did not disclose the persons present.

We turn finally to the question of training, which we do not need to address in detail because the Commission has commendably undertaken, in its words, “to implement annual training as a corrective measure.” We have confirmed, however, that the Commission has not violated the requirement § 3-213 that each public body designate an employee, officer, or member to take training; the Commission’s minutes show that the employee whom it designated in 2014 still serves the Commission.

In conclusion, we find that the Commission violated the Act with regard to its closed-session disclosures, as detailed above.

Open Meetings Compliance Board

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